IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1189 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHAVANBHAI MAVJIBHAI RATHOD

Appearance:

Mr.Ashish M. Dagli, for MR YOGESH S LAKHANI,
for Petitioners

MR MINESH C DAVE for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

The respondent herein is the original plaintiff of Civil Suit No.811 of 1993. The aforesaid suit has been filed for a declaration and injunction on the ground that the plaintiff is serving on the post of Conductor in S.T. Corporation and that on 5.6.1991, while he was on

duty, he was subjected to enquiry on the ground that even though he had made the checking, tickets were not issued to the passengers and that his intention was not honest. He was subjected to show cause notice by the S.T. Corporation, of which he gave reply. The plaintiff had earlier also filed Civil Suit No.590 of 1993, challenging the show cause notice given by the S.T. Corporation, wherein the civil court had ordered that if any adverse order is passed against him, that may not be implemented for a period of 15 days from the date of receipt of this order by the plaintiff. Thereafter, after the plaintiff was removed from service, the present suit has been filed, challenging the aforesaid order and seeking a decree for declaration and injunction.

According to the plaintiff, the said order is illegal, arbitrary and contrary to the principles of justice. Along with the suit, the plaintiff gave application Exhibit 5 for interim injunction. The learned Second Joint Civil Judge (S.D.), Rajkot, by his order dated 20th July, 1993, after giving detailed reasonings, rejected the said application.

The aforesaid order of the trial court was challenged by the respondent-original plaintiff before the appellate court by filing an appeal under Order 43 of the C.P.C., being Civil Miscellaneous Appeal No.135 of 1993. The said appeal was heard by the learned 4th Extra Assistant Judge, Rajkot, who, by his judgment and order dated 27th May, 1996, allowed the said appeal and set aside the order passed below Exhibit 5. The learned appellate Judge granted the Application Exhibit 5, which was given by the original plaintiff in the suit. The effect of the same is that the plaintiff is continued in service by the S.T. Corporation in view of the injunction order granted by the appellate court. The aforesaid order of the appellate court is impugned in the present C.R.A. by the original defendant, the S.T. Corporation and Divisional Traffic Superintendent.

At the time of hearing of this revision application, Mr.Ashish M. Dagli for Mr.Lakhani submitted that the civil court has no jurisdiction to grant relief, which was prayed for by the plaintiff and, therefore, the order of the appellate court is absolutely without jurisdiction. He further submitted that by way of injunction, the employer should not be asked to continue a person in service as removal order has already been passed. In his submission, if the plaintiff, ultimately, succeeds, he can be compensated by way of back wages for the intervening period. But, once the services of an

employee is put to an end, by interim order, no order of reinstatement could have been passed by the learned appellate Judge. He also submitted that in view of serious misconduct, in which the plaintiff was found to have been involved, and, ultimately, it was proved by the Department that he was involved in such misconduct, and he was removed from service, no discretionary order of injunction, asking such person to continue in service could have been passed. He relied upon the judgment of the Honourable Supreme Court, in Jitendra Nath Biswas v. M/s. Empire of India and Ceylone Tax Co. and another, AIR 1990 SC 255, wherein the Honourable Supreme Court has stated that relief of reinstatement and back wages is available only under the I.D. Act and the said relief cannot be granted by the Civil Court and the provisions of the I.D. Act impliedly exclude the jurisdiction of the Civil Court as regards such relief.

It is not in dispute that the plaintiff was found to have been involved in misconduct in the nature of not giving tickets to the passengers after receiving amounts from the passengers of the bus. Whether there was any justification or sufficient evidence for taking such decision is not a matter, which is required to be considered at the time of deciding application Exhibit 5 by the Civil Court. Since the suit is pending, I refrain myself from passing any wider observation, which may affect the case of either side. However, I cannot ignore the fact that there is already an order of removal against the plaintiff, which order he has challenged before the civil court. In a service matter, if order of removal is challenged before the civil court, the Court is required to see the question of balance of convenience also. If a person is removed from service by his employer, and if the court, by interim injunction, directs the employer to continue said person in service and ultimately if the suit is dismissed, then, naturally if the said person has served on the aforesaid post by virtue of court order, cannot be asked to repay the amount, as, even on the principles of quantum meruit, he would be entitled to have the salary for the period for which he has served. On the other hand, if, ultimately, he is reinstated in service, he can be given all benefits, including benefit in the nature of back wages and all other consequential benefits. In the first place, therefore, by injunction if a person is allowed to continue in service in spite of the removal order by the employer, if the ultimate result of the suit is against the said plaintiff, it will be difficult to salvage the situation, while, on the other hand, if the plaintiff has good case and ultimately he succeeds in the suit, he will

be able to get all benefits. The learned appellate Judge has lost sight of this fact completely by allowing the appeal of the original plaintiff by granting injunction in his favour. Various judgments were cited before the trial court by the S.T. Corporation regarding the question of jurisdiction also, which the trial court has take note of in its judgment. However, the learned appellate Judge has not considered the same in its real spirit. In the instant case, it seems that the plaintiff delinquent had pleaded guilty also before the authority and thereafter, enquiry was held. Sufficiency of evidence before the Disciplinary Authority is not relevant and that question was not required to be decided while deciding application Exhibit 5 by the learned appellate Judge. Order of the appellate court suffers from total non-application of mind, ignoring the provisions of Order 39 of the C.P.C. The learned appellate Judge overlooked the fact that when, after enquiry, order of removal is passed, there was no question of granting injunction, allowing the employee to continue in service. Prima facie, the plaintiff was found to have been involved in series of irregularities in financial matters of the S.T. Corporation. May be, ultimately, he may be in a position to prove that he was innocent or that the departmental enquiry was vitiated, but, all these questions cannot be decided at the time of deciding interlocutory application. Even assuming that there is prima facie case, which I find difficult to believe at this stage, then also, that itself is not enough to grant injunction in favour of the plaintiff. The appellate court has completely overlooked the question of balance of convenience. By virtue of such injunction, even though the plaintiff has been removed since long, he has been continued in service for more than seven years. The appellate Judge should have considered this problem from different angle. The appellate court should have considered that there is serious point of jurisdiction involved in the matter and it cannot be said that the order of removal in question was void ab initio. The Civil Court, while deciding the application under Order 39 has to consider such application within the four corners of law. The Court is supposed to see the consequences of injunction also while keeping in mind the question about irreparable injury. As stated earlier, by refusing injunction, the plaintiff was not to suffer as such as compared to the defendant, because he should have been compensated if the suit is decreed in the form of back wages and reinstatement, while ultimately if the suit is dismissed, the wages, which he has got for all these years, because of the interim order of the appellate court, cannot be taken

away from him because, ultimately, he has served in view of the order granted by the court. In service matters, it is all the more necessary to consider these observations minutely before granting any interim relief. There may be a case where the employee may even retire from service on attaining superannuation and upto that period, if he has served because of the interim order of the Court, then serious consequences are likely to arise. It is hoped that the courts, while considering such applications under Order 39 will bear in mind all the aforesaid pros and cons and would not make any haste in passing interim orders as the one which is granted in the instant case. As stated earlier, the learned appellate Judge has not considered the problem in its true perspective and in hot hurry, allowed the appeal filed by the respondent. The aforesaid order of the appellate court is absolutely unsustainable and deserves to be set aside. It is, however, clarified that the aforesaid observations have no bearing so far as the pending suit is concerned and the same is required to be decided on its own merits and as per the evidence, which might be led by the parties before the Court.

With these observations, this Revision Application is allowed, and the order of the appellate court is set aside. Rule is made absolute to the aforesaid extent.

Since the suit is of the year 1993, the trial court is directed to dispose of the same at the earliest, preferably by 30th April, 2001.

23rd June, 2000 (P.B. Majmudar, J.)

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(apj)